DOCKET NO. 25188

PETITION OF EL PASO NETWORKS, LLC FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH SOUTHWESTERN BELL TELEPHONE COMPANY	§ § § §	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

EL PASO NETWORKS LLC
DIRECT TESTIMONY OF WILLIAM PARK

Q. PLEASE STATE YOUR NAME AND CURRENT POSITION.

A. My name is William ("Rob") Park, Jr. I am employed at El Paso Global Networks ("EPN") as Vice President, Sales Engineering. I have held this position since November 2001. Prior to that, my title was Vice President, Commercial Development at EPN.

Q. HAVE YOU EVER TESTIFIED BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS?

A. No. I have not previously testified before this Commission. However, parallel with this proceeding, I am testifying in connection with EPN's Complaint and Request for Interim Ruling (Docket No. 25004).

Q. PLEASE SUMMARIZE YOUR DUTIES AT YOUR CURRENT POSITION.

A. In my current position I negotiate and work with customers to develop interconnection solutions and coordinate interconnection implementation. In my earlier role at EPN, my responsibilities pertained to negotiating and implementing acquisitions, strategic alliances and commercial interactions with other telecommunications providers.

Q. PLEASE SUMMARIZE YOUR WORK EXPERIENCE BEFORE JOINING EPN?

A. Prior to joining EPN, I was employed at MCI Telecommunications Corporation ("MCI") for four years. In January, 1996, I joined Southwestern Bell Telephone ("SWBT") where I was employed until moving to EPN. During my tenure at MCI and in my first position

at SWBT, my responsibilities were of a primarily technical nature, through which I am very familiar with the building, design and operations of networks and all aspects of interconnection and provisioning. At MCI, my initial position was that of a Networks Operations Engineer, responsible for the design and construction of facilities, including international interconnection facilities, collocation spaces, and building MCI's long-haul fiber optic network. After being promoted to a supervisory engineering position in 1995, I managed a team of ten engineers, adding more design and budget responsibility to my earlier role.

Upon joining SWBT as a Network Manager, I was assigned to a supervisory role in the Central Office Organization, managing a number of technicians to support business and residential services depending on the ESS and high-capacity networks terminating through that Central Office. I remained in this position until October of 1997, gaining substantial experience in all facets of hands-on CO and outside plant operations, including fiber optic, digital T-1 and ISDN equipment, circuit and trunk installations, rearrangements and so forth -- essentially being involved in all the aspect of provisioning, operations and maintenance at the Central Office level.

After being promoted to a position of manager of local accounts, I became responsible for handling SWBT's relationships with fifteen (15) CLEC customers in a five state region. This responsibility included negotiating and implementing interconnection agreements with these competitive carriers, and follow-up, day-to-day provisioning and maintenance related issues as they arose. During this time, I was also involved in supporting SWBT's Section 271 petitions. Subsequently I was given an

A. When EPN submits a facility check request for DS3 or higher capacity loop or transport, SWBT should be required to provide a spreadsheet detailing the capacity available at the location and the existing configuration of equipment that will allow EPN to determine what options exist for EPN at that location. EPN is simply asking to look at the same information that SWBT utilizes when making network design choices. If SWBT were to disclose all available DS3 and above loops/transport to a designated location in its initial response to an EPN facility check request, EPN would be able to assess the most efficient route to the location and be better able to turn up its network to serve potential customers. At the same time, EPN would be able to eliminate the need to file multiple check requests until EPN locates a specific route. EPN's position is efficient, clearly warranted under the non-discrimination principles of the Act, and should be adopted by this Commission.

Issue 23: Should SWBT's facilities check responses for interoffice transport and dark fiber include route and path information, including intermediate office? (App. UNE § 5.3.1, 18.7.6.2)

Should EPN have the right to request a specific route, if such route is available? (App. UNE § 5.1)

Q. WHAT IS THE NATURE OF THE DISPUTE CONCERNING ISSUE 23?

A. Issue 23 relates to SWBT's practice of withholding route and path information in its facility check responses -- both on lit and dark routes. Currently, SWBT requires that we order UNEs on an A to Z basis, from starting point to ending point of the circuit. Then, when SWBT confirms that the route is available to us, it goes out of its way to not tell us what path the fiber takes. This prevents us from telling our customers how their circuit is designed (something SWBT tells its customers) and prevents us from designing our network in the given city. This process is inefficient and requires EPN to play yet another shell game to design a physically diverse system for its Texas customers.

Q. WHY IS IT IMPORTANT FOR EPN TO KNOW SPECIFIC ROUTE AND PATH INFORMATION?

A. Customers want and need their circuits to be physically diverse, and EPN is entitled to request a specific route, if more than one route is available, to ensure that the routes on which it obtains fiber are actually physically diverse. Most fiber systems incorporate physical route diversity as a major feature for system reliability. SWBT offers this service to its customers. Fiber cables do get severed by construction activity. It is, therefore, necessary to construct redundant paths to carry copies of optical signals that follow separate and physically diverse paths. With physical diversity, a cable that is cut will interrupt transmission on only one of the paths, and the customer can enjoy uninterrupted service over the diverse path while the Carrier repairs the severed path. Knowledge of the exact route and path information is critical so that EPN can ensure that the alternate path is, in fact, physically diverse. In addition, EPN's sophisticated customers demand to know the exact path of the transmission facility on which EPN provides its service. SWBT's practice forces EPN to tell EPN's customer, "I don't know," when the customer inquires as to what path its data is traveling. EPN cannot compete with SWBT without the ability to design, deploy, and detail diversity in its network.

Q. ARE THERE ANY OTHER REASONS WHY EPN NEEDS ROUTE AND PATH INFORMATION?

A. EPN also needs basic information on its routes to know where their network is located so that they can serve future customers off of that path. When a customer calls us and asks for service, we should not have to answer, "I don't know if my network is in your

neighborhood." Yet, this is what SWBT forces us to say, by going out of its way to keep this information from us.

Q. DOES SWBT REGULARLY PROVIDE SUFFICIENT INFORMATION FOR EPN TO DETAIL ITS ROUTES?

A. No. In the past, SWBT has imposed unreasonable limits on the number of fiber segments EPN could order in a given day. That unreasonable limit coupled with SWBT's already burdensome process for ordering each segment would have required over a year to order the fiber needed to complete a typical metropolitan network. Eventually, SWBT conceded that its practices were unreasonable, and agreed to revise the ordering process from ordering each segment piecemeal to allowing EPN to order a complete A to Z fiber route with a single request. Under the new A to Z ordering process, however, SWBT, as noted, will not tell us how we are getting there. SWBT imposes unnecessary costs and delays in EPN's ability to access dark fiber and to design physical route diversity by refusing to disclose the locations of the intermediate offices.

Because SWBT is in the best position to know the specifics of its fiber routes, SWBT should provide specific route and path information to EPN to allow EPN to decide for itself how to obtain and utilize physically diverse facilities. Disclosure of this information is necessary to ensure that EPN can plan its own network and build redundancy at parity with the manner in which SWBT builds such redundancy to serve its customers.

Q. CAN A DIVERSE OPTICAL NETWORK BE DESIGNED WITHOUT NON-DISCRIMINATORY ACCESS TO ROUTE AND PATH INFORMATION?

A. No. It is not possible to design and build physical diversity into an optical system without this information. If EPN does not know specific route and path details, EPN cannot know that the optical system will be properly designed and, in fact, physically diverse. Moreover, SWBT has indicated that it will not process facility check requests if EPN even makes a request that the route run through a given intermediate central office in the middle of the path. .

Q. WOULD SWBT BE BURDENED IF IT WERE REQUIRED TO PROVIDE EPN ACCESS TO THIS INFORMATION?

A. No. Ironically, it is just the opposite. In processing a facility check request, SWBT searches its databases and other information to determine if facilities are available between the requested locations. This process requires that SWBT cultivate information concerning intermediate offices and other details of its network between the specified A to Z location. After SWBT gathers this data, it actually expends additional effort to remove the information concerning intermediate offices from the response it provides to EPN. SWBT's behavior is unreasonable for the following reasons.

First, this is information that EPN has paid SWBT to compile. When EPN submits a facility check request, EPN is assessed a $250 processing fee, payable to SWBT, for obtaining information concerning SWBT's facilities. EPN submits this fee seeking to obtain information concerning the availability of SWBT's facilities between a requested A to Z location. When SWBT conceals information concerning its intermediate offices, or refuses altogether to process a facility check request because EPN

has not identified all intermediate offices along a requested route, SWBT does not fulfill its commitments under the facility check request process.

Second, when SWBT provides a response to a facility check request without intermediate office information, while some of the identifiers needed by EPN to construct a fiber route may remain, those identifiers are generally not sufficient to identify the complete fiber path. SWBT's concealed responses are calculated to restrict EPN's access to information and hinder EPN's ability to request facilities to construct competing routes.

Third, SWBT internally provides unrestricted access to this information to itself and to its affiliates. SWBT recognizes that access to this information is essential to any network planning and/or marketing campaign. SWBT's practice of restricting EPN's access to this information is discriminatory and inconsistent with federal law.

The Commission should require that SWBT provide EPN access to information contained in its databases and systems that is sufficient to allow it to request much needed facilities. To do so, the Commission would not have to require SWBT to take any further action. SWBT would simply provide its responses to EPN's facility checks without concealing the very information which EPN has paid SWBT to compile.

Q. PLEASE EXPAND ON YOUR COMMENT THAT SWBT'S PRACTICE OF RESTRICTING ACCESS TO ROUTE AND PATH INFORMATION IS INCONSISTENT WITH FEDERAL LAW.

A. Part and parcel of SWBT's obligations to provide unbundled access to UNEs is SWBT's obligation to provide EPN with non-discriminatory access to "pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent

LEC's databases and information"[4] Thus, if SWBT provides route information to its affiliates, or if any of SWBT's personnel have access to this information, SWBT is required to provide the same information on a non-discriminatory basis to EPN. Because SWBT personnel are the ones that maintain this information, there is little dispute that SWBT has access to the information. It follows that SWBT may not deny EPN access to the same information.

SWBT's current practices are blatantly anti-competitive and infringe on EPN's rights under federal law to obtain non-discriminatory access to all information regarding the fiber facility that exists in SWBT's back offices. Indeed, SWBT's removal of the route and path information is precisely the kind of practice the FCC sought to eliminate when it prohibited ILECs from "filtering or digesting" the information CLECs obtain from ILEC back office systems.[5] When SWBT gathers information from its systems to respond to an EPN facility check request, it should be obligated to provide access to any such information upon request by EPN, conditioned on the confidentiality provisions outlined in the Agreement. SWBT's practice of stripping down the cultivated information to provide only bare responses circumvents its obligations under federal law and must be rejected by this Commission.

In addition, I would suggest that SWBT also has an obligation under federal law to provide requesting carriers access to diverse facilities (in addition to its obligation to provide information about the existence of those facilities). Since SWBT has designed its own interoffice network to incorporate diverse fiber routes, its obligation to provide

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[4] *Id.* at ¶425.

[5] *Id.* at ¶428.

"non-discriminatory" access to network elements under Section 251(c)(3) of the Act includes the obligation to provide access that allows a CLEC to design a comparable level of route diversity into its network.

Q. WHAT IS SWBT'S POSITION ON THIS ISSUE?

A. SWBT believes it meets its obligation to provide route and path information. The information is provided *after* the facility is provisioned and installed -- and only when EPN proactively makes a telephone call to SWBT's local operations center (LOC) and requests the route of a circuit. In other words, EPN cannot design a network up front the way SWBT does. In order for EPN to design diversity, EPN would be required to order multiple circuits, guess their possible route, wait for them to be installed, call and find out verbally the route of the circuit, and then try to design a network by ordering new routes to make up for the routes provided by SWBT. This inefficiently utilizes SWBT's facilities, requires EPN to pay for facilities it does not need, and makes it impossible for EPN to do any preliminary network design.

Q. WHAT RESOLUTION DOES EPN PROPOSE FOR ISSUE 23?

A. The Commission should require that SWBT provide EPN route and path information, including intermediate office information, for UNE interoffice transmission facilities at the time the facilities are confirmed available. EPN does not ask that SWBT design a system for EPN, rather that SWBT discontinue its practice of concealing information that EPN requires to design and construct its network – information that EPN pays SWBT to compile. The Agreement should further specify that EPN can plan for and provide physical diversity in its network, including where EPN's network uses UNEs obtained from SWBT.

Issue 24: **Should SWBT be penalized when its facility check responses are subsequently proved inaccurate? (App. UNE § 18.5.5.6, 18.7.5)**

Should SWBT be required to provision a UNE immediately when EPN demonstrates SWBT's rejection of EPN's original request was unwarranted? (App. UNE § 18.7.5.2)

Q. WHAT IS THE NATURE OF THE DISPUTE CONCERNING ISSUE 24?

A. In the past, EPN has received numerous "no facilities" responses from SWBT that subsequently proved to be inaccurate. Rather than simply proceeding with the provisioning process when EPN demonstrates that a rejection was erroneous, SWBT requires that EPN resubmit the facility check request at an additional nonrecurring charge. To deter this unreasonable behavior, EPN seeks contract language that would specify that SWBT should immediately provision a requested UNE – rather than requiring EPN to resubmit the facility check request – if EPN demonstrates that SWBT's rejection was erroneous. EPN also seeks contract language that would penalize SWBT for providing erroneous facility check responses to deter further anti-competitive behavior by SWBT.

Q. WHAT HAS BEEN EPN'S EXPERIENCE WITH INACCURATE FACILITY CHECK RESPONSES?

A. SWBT routinely provides facility check responses stating that no facilities are available along a route requested by EPN. Under the current agreement between the Parties, EPN has the right to verify SWBT's facility check responses by reviewing SWBT's engineering records. In many instances, EPN has found that, despite a "no facilities" response from SWBT, there were, in fact, facilities available along the requested route. Examples of SWBT's errors were explained in detail in the Testimony of Robert

Passmore, in the Interim Relief hearing in this Complaint.[6] I hereby incorporate that testimony for all purposes here. To make matters worse, when an EPN review determines that a SWBT "no facilities" response is incorrect, SWBT requires EPN to resubmit the facilities check request at an additional nonrecurring charge, instead of simply provisioning the UNE as initially requested by EPN.

In each instance that EPN receives a "no facilities" response from SWBT, EPN must review and verify SWBT's facility check responses by reviewing SWBT's engineering records. In performing these reviews, EPN expends significant time and economic resources in verifying the response (oftentimes flying people to the relevant city) and in preparing and filing subsequent facility check requests. Moreover, in many instances, EPN faces the prospect of losing a potential customer because it is unable to provide the customer with timely and accurate responses until EPN receives timely and accurate responses from SWBT regarding the availability of fiber facilities. SWBT's anti-competitive practices inject undue delay and expense into the provisioning process and should be rejected by the Commission.

Q. WHY IS IT NECESSARY TO ASSOCIATE PENALTIES TO EACH INSTANCE WHERE SWBT PROVIDES EPN WITH INACCURATE FACILITY CHECK RESPONSES?

A. EPN has repeatedly requested that SWBT correct this inefficiency in the facility check response process. SWBT, however, has no incentive to do so. EPN can only assume that SWBT is comfortable with the flaws in its current process. In fact, the longer the process remains broken, the less chance EPN has to obtain timely and accurate information at its

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[6] EPN Interim Ruling Hearing Tr., (Passmore) 22:8-112:18.

disposal to secure customers and compete with SWBT. To deter SWBT's incentive to provide inaccurate facility check responses, EPN proposes that SWBT pay a penalty for each facility check response where the initial response was inaccurate. The penalty should be fair and reasonable, but substantial enough to ensure that SWBT performs the facility check responses accurately upon submission by EPN. EPN's proposed penalty recognizes that SWBT imposes unnecessary costs and delay into the process, and is the most effective method for EPN to ensure that SWBT's facility check responses are accurate when initially provided to EPN.

Q. WHAT RESOLUTION DOES EPN PROPOSE FOR ISSUE 24?

A. EPN requests that the Commission implement measures that would deter SWBT's anti-competitive practices of injecting time and expense into the provisioning process by providing incorrect facility check responses. EPN believes that it is wasteful for SWBT to require EPN to submit subsequent facility check requests each time EPN proves SWBT's facility check response to be in error. In addition, EPN requests that the Commission adopt EPN's proposed language that penalizes SWBT for providing inaccurate facility check responses.

Issue 25: Whether SWBT is required to provide EPN non-discriminatory access to all information, including the databases SWBT personnel have at their disposal to determine whether facilities are available to serve customers? (App. UNE §§ 5.3.5, 5.3.8, 12.3, 12.3.1, 12.3.2, 18.2.1.1, 18.5, 18.5.1, 18.5.1.3, 18.5.5)

Q. PLEASE DESCRIBE THE DISPUTE BETWEEN EPN AND SWBT CONCERNING ISSUE 25.

A. SWBT has consistently denied EPN parity access to the tools that SWBT utilizes to provision dark fiber and other services. Specifically, EPN seeks parity access to the same information SWBT provides for its retail, wholesale, and interexchange carriers when

such affiliates request services from SWBT. Despite this Commission's past rulings requiring SWBT to provide parity access to provisioning-related information, SWBT continues to evade its obligations to provide equal access to its Trunks Integrated Record Keeping System ("TIRKS"), Job Management Operational System ("JMOS"), Plant Layout Records ("PLRs"), and Design Work Orders ("DWO"), as well as maps and estimates of future facilities that are planned, pending, partially completed, completed but conveniently not posted by SWBT, or reserved for SWBT's favored customers. As an SWBT Access Account Manager Supporting Interexchange Carriers, SWBT Account Managers as well as SWBT Service Managers, Project Managers, and I had access to TIRKS that enabled all of us to efficiently and timely address SWBT Interexchange Carrier customer questions. I frequently queried the TIRKS' database to obtain network information in an effort to keep the SWBT Access customer informed. My queries specifically dealt with SONET Carrier Data that identified how SONET rings were configured as well as correlate circuits that were provisioned on the applicable ring. The Interexchange Carrier and the SWBT Account Manager use this information for planning purposes to insure equipment and capacity is in place for the SWBT customer to utilize, if and when needed. The SWBT customer also used the TIRKS' data as a data integrity tool to insure that their databases matched SWBT's.

Q. IS THERE ANY EXPLANATION FOR THE PROBLEMS EPN HAS EXPERIENCED ORDERING UNES FROM SWBT?

A. The most logical explanation requires an understanding that the SWBT employees responsible for processing EPN's orders and locating available facilities to satisfy EPN's UNE orders have no incentive to complete and fulfill EPN's orders. In fact, I believe that

Q. PLEASE EXPLAIN THE PROCESS UNDER WHICH EPN OBTAINS INFORMATION CONCERNING FACILITY AVAILABILITY FROM SWBT.

A. The process under which EPN obtains information concerning SWBT's fiber availability requires the cooperation of both Parties. As an initial matter, EPN must identify the particular A to Z locations for which it requires dark fiber from SWBT. EPN then provides other required information in a facility check request, and submits the request to SWBT's Local Service Center ("LSC"). The LSC then provides the information contained in the facility check request to SWBT's Network Sales Support ("NSS") organization, which, in turn, obtains the requested information from SWBT's field engineers for the applicable geographic area. The NSS organization receives the data obtained from the engineers, compiles it into spreadsheet form, and sends the spreadsheet back to the LSC. These spreadsheets reflect, among other items, whether fiber is available, the cable numbers, and route and path information, including intermediate offices. SWBT should (as it does for its customers), query its TIRKS' database, review its PLRs, planned, pending, partially completed, and completed but not posted DWOs, verify the steps on DWOs that are completed in the JMOS data base, other maps, any pertinent information on "blue line" paper in the engineers' office of existing job lists not posted to SWBT's inventory systems, and identify all fiber that is available for EPN's desired route as outlined on the facility check request. When all of this information is compiled and analyzed by NSS, it forwards the information to the LSC which then provides EPN a response detailing whether fiber is available between the A to Z locations.

Q. HOW DO SWBT'S ACTUAL PRACTICES DIFFER FROM THE PROCEDURES YOU JUST OUTLINED?

A. SWBT understands precisely what information and facilities EPN needs in order to serve its customers; and, regretfully, SWBT appears to intentionally game the procedures outlined above for providing facility availability information. In so doing, SWBT impedes EPN's access to such facilities and thwarts EPN's ability to serve Texas customers within its network. SWBT's anti-competitive tactics regularly include, but are not limited to, providing misinformation concerning fiber availability, failing to update its PLRs, denying access to its TIRKS' databases and other tools containing facility information, and missing appointments with EPN engineers that are deployed to confirm SWBT's "no facility" contentions. In hindering EPN's access to SWBT's dark fiber resources, SWBT accomplishes two goals: *first*, SWBT is able to delay and burden EPN's ability to serve its customers, thus impeding competition; and *second*, SWBT retains greater dark fiber resources for its affiliates for future growth. SWBT's calculated tactics require EPN, time and again, to expend significant resources petitioning the Commission for relief, and are directly intended to impose barriers to EPN's ability to service its customers. In addition, SWBT inconsistently and incorrectly applies the 25% spare rule. When EPN requested that SWBT retrain the personnel on how the 25% spare rule is to be applied, particularly to EPN, SWBT sent an email to a handful of people and did not follow up to make sure the information was utilized.[7] This is confirmed in Ms. Allen' s testimony in the Complaint Hearing with EPN in Docket 25004.[8] In

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[7] See SWBT Ex. 5, Interim Ruling Hearing, Ex. WP-2

[8] Docket 25004, Interim Ruling Tr. at 227.

A. Yes. In Docket No. 17922/20268,[15] the Commission addressed access to dark fiber, the TIRKS' database, and PLRs. Specifically, the Commission recognized that Waller Creek, in order to obtain parity with SWBT's retail operations, required access to SWBT's PLRs and reports from SWBT's TIRKS' database indicating the location of fiber at SWBT offices. The Commission required SWBT to provide access to PLRs, indicating the location of fiber at SWBT offices, until such time as a dedicated Sun workstation is permitted and established at each SWBT engineering location solely for CLEC use.[16] The arbitrators further recognized that SWBT does not always have up-to-date PLRs that accurately reflect all of the fiber available. For this reason, the Commission required that, in instances where the PLRs do not show the most recently completed fiber jobs in a geographic area, *SWBT must advise Waller Creek of what facilities have been placed that are not reflected in the PLRs.*[17]

The Commission also decided that requests for information about dark fiber on a statewide basis or LATA-wide basis were not appropriate and, therefore, required SWBT to provide reports from the TIRKS' database to Waller Creek.[18] Under the *Waller Creek*

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[15] *Petition of Waller Creek Communications, Inc. for Arbitration With Southwestern Bell Telephone Company*, Docket No. 17922, *Complaint of Waller Creek Communications, Inc. for Post Interconnection Agreement Resolution With Southwestern Bell Telephone Company*, Docket No. 20268, Revised Arbitration Award in Response to Motion for Order Nunc Pro Tunc on Post-Interconnection Disputes (Tex. P.U.C. Jun. 22, 1999) ("*Waller Creek Award*").

[16] *Waller Creek Award*, at 6-7. ("The Arbitrators conclude that SWBT must provide WCC access to PLRs indicating the location of fiber (actual maps and imaged/digitized versions through the Sun Workstations) at SWBT offices until such time as a dedicated Sun Workstation is permitted and established at each SWBT engineering location solely for CLEC use. In instances where the PLRs do not show the most recently completed fiber jobs in a geographic area, WCC will be advised of what facilities have been placed that are not reflected in the PLRs.")

[17] *Waller Creek Award*, at 6-7 (emphasis added).

[18] *Id.* at 9.

Award, the reports are to be prepared by SWBT and provided to Waller Creek within five business days of Waller Creek's request.[19] Recognizing the anti-competitive nature of SWBT's provisioning practices, the Commission also ordered SWBT to consult with Waller Creek in its development of the dark fiber ordering and provisioning process.[20]

Q. HAS SWBT ADHERED TO THE PROCEDURES OUTLINED IN THE *WALLER CREEK AWARD* REGARDING PARITY ASSISTANCE PROVISIONING?

A. No. In the *Waller Creek Award*, SWBT committed to regularly updating its PLRs to reflect fiber installations. Nevertheless, over the three years since the Commission first approved the Waller Creek interconnection agreement and over two years since its *Waller Creek Award*, SWBT continues to deny EPN parity access to information regarding the availability of dark fiber. SWBT regularly and knowingly provides erroneous facility information regarding the availability of dark fiber to EPN, and regularly games its provisioning practices so as to render the Commission's mandates in the *Waller Creek Award* meaningless. According to the testimony of Mr. Ron Roberts, a long-time SWBT employee, PLRs are not updated with completed fiber routes unless every part of the DWO is complete.

On a number of occasions, SWBT has returned facility check responses indicating that no dark fiber facilities were available for EPN's use. When EPN engineers, using their rights under the existing interconnection agreement and the *Waller Creek Award*, travel to SWBT offices to review PLRs and other records, they are frequently denied access to the pertinent records. Because EPN is denied access to these records, it is

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[19] *Id.* at 8.

[20] *Id.* at 18.

required to further expend resources to deploy engineers to personally inspect the customer premises. These inspections have, time and again, revealed that SWBT's dark fiber facility check responses were incorrect and that, in fact, fiber was available. Indeed, in every case that EPN has expended the time, effort, and money to verify SWBT's dark fiber facility check responses, EPN has found that SWBT's responses were inaccurate, flawed, or otherwise misleading.

On several occasions, EPN fiber engineers have also discovered SWBT dark fiber facilities terminating to a particular location, despite the fact that the PLRs contained no reference to such fiber. Also, as a result of its failure to inform its employees of their obligation to provide EPN parity access to dark fiber and dark fiber information, SWBT's employees repeatedly fail to attend scheduled appointments with EPN engineers and technicians, and fail to update its PLRs.[21] Furthermore, on the occasions where EPN's fiber engineers were able to review PLRs, the records were frequently found to be incomplete because they did not reflect completed fiber installations, including, in some instances, installations completed over two years ago or partially completed installations. By failing to update its PLRs, SWBT renders its Commission-imposed obligation to maintain an accurate and consistent method for processing dark fiber checks illusory.

In addition, although the *Waller Creek Award* explicitly requires SWBT to provide EPN with Business Object Reports from the TIRKS' database within a five-day interval, EPN's experience is that SWBT still has no process in place to provide the

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[21] Only at the constant prodding on behalf of EPN, and only after EPN expended considerable resources to demonstrate to SWBT that SWBT's employees were not providing the required parity access and information, did SWBT develop such procedures. SWBT only revealed the contents of its policy to EPN, and informed EPN to whom notice of the policy was provided, at the Interim Ruling Hearing in Docket No. 25004, held on Nov. 20, 2001.

desired TIRKS' reports to EPN, despite consistent requests from EPN. Further, although SWBT claims to have a five-day interval for returning facility checks to EPN, it imposes arbitrary and unnecessary requirements that must be met before it will "start the clock" on the five-day response. In reality, it can take up to two weeks for EPN to obtain SWBT's response to a facility check. When these two weeks are added to the time that EPN must spend to verify every "no facility" response from SWBT, it can take up to six weeks for EPN to deploy service to its customer.

SWBT imposes additional delays on EPN's ability to serve its customers by denying access to its DWOs at outside plant record reviews that record recently completed fiber installations and fiber installations that are in progress and near completion. For example, SWBT has justified this anti-competitive behavior by claiming that EPN's right to review SWBT's engineering records and maps only applies to jobs that SWBT deems "completed," and that SWBT only considers a job completed when it is posted in the PLRs, regardless of whether SWBT was currently using the fiber installed pursuant to the DWO to provide service to its own customers.[22]

SWBT's refusal to comply with its Commission-mandated obligations to provide EPN with access to dark fiber information has delayed, and continues to impede, EPN's deployment of its state-of-the-art fiber optic network and, in specific instances, has precluded EPN from using UNE dark fiber to service its customers.

Q. HAS SWBT FULFILLED ITS COMMITMENT TO PROVIDING ACCESS TO SUN WORKSTATIONS?

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[22] *Complaint and Request for Interim Ruling of El Paso Networks, LLC for Post Interconnection Agreement Dispute with Southwestern Bell Telephone Company*, Docket No. 25004, Complaint and Request for Interim Ruling of El Paso Networks, LLC, at 21 (Tex. P.U.C. Nov. 12, 2001).

A. No. In the June 8, 1999 Arbitration Award, SWBT was ordered to provide EPN (formerly WCC) with: (1) access to digitized maps that can be enlarged and reduced on screen for ease of viewing information; (2) access to electronic images of PLRs Sun workstations at locations statewide; and (3) updates to the electronic PLRs within thirty (30) days of the time similar updates are entered in the TIRKS' database.[23] To date, SWBT has not provided Sun workstations to EPN in all locations and EPN has not been provided the information that was ordered by this Commission to be provided by Sun workstations.

Q. HAS EPN BEEN COMPELLED TO EXPEND FURTHER RESOURCES TO PREVENT SWBT FROM PERPETUATING SUCH ANTI-COMPETITIVE PRACTICES?

A. Yes. Despite the Commission's ruling in the *Waller Creek Award*, SWBT's habit of providing materially misleading facility check responses and gaming its provisioning practices has required EPN to further litigate SWBT's parity assistance practices before this Commission. On November 12, 2001, despite EPN's repeated attempts to resolve issues surrounding SWBT's continued failures to provide parity access to dark fiber, as required under the Parties' existing Agreement and the *Waller Creek Award*, EPN was forced to initiate its third dark fiber provisioning-related dispute against SWBT.

In that complaint, EPN sought relief from many of the same anti-competitive practices described in the present testimony. Based upon the testimony provided at the

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[23] *Petition of Waller Creek Communications, Inc. for Arbitration With Southwestern Bell Telephone Company*, Docket No. 17922, *Complaint by Waller Creek Communications, Inc. for Post Interconnection Agreement Resolution With Southwestern Bell Telephone Company*, Docket No. 20268, Arbitration Award, at 7 (Tex. P.U.C. Jun. 8, 1999).

hearing, the Arbitrators found that SWBT's failure to properly document and subsequently determine fiber availability to EPN "prevents EPN from provisioning scheduled service and obtaining new customers."[24] The Commission also found that, even when EPN sends engineers to check SWBT's records, EPN is still at a disadvantage due in large part to SWBT's records not always being up to date.[25] Accordingly, the Commission held that SWBT must "provide EPN with parity access to SWBT [DWOs] to enable EPN to ascertain whether fiber is available based on fiber installation jobs that SWBT has not yet recorded on its [PLRs]."[26]

Q. ARE SWBT'S ANTI-COMPETITIVE PROVISIONING PRACTICES LIMITED TO ITS DEALINGS WITH EPN?

A. No. In a separate proceeding (Docket 22469),[27] the Arbitrators amplified SWBT's obligation to provide competitive LECs non-discriminatory access to loop qualification information in light of the *UNE Remand Order*. The Arbitrators stated that "any limit of access to information is a great detriment to competition; as much of the information contained by ILEC systems is critical to the ability of other carriers to compete with ILECs. Therefore, by limiting CLECs to only a set list of data, SWBT may be

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[24] *Complaint and Request for Interim Ruling of El Paso Networks, LLC for Post Interconnection Dispute Resolution with Southwestern Bell Telephone Company*, Docket No. 25004, Order No. 2 Interim Ruling, at 3 (Tex. P.U.C. Nov. 21, 2001) ("*EPN Interim Ruling*").

[25] *EPN Interim Ruling*, at 3

[26] *Id.*

[27] *Petition of Rhythms Links, Inc. Against Southwestern Bell Telephone Company for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions and Related Arrangements for Line Sharing*, Docket No. 22469, Revised Arbitration Award, at 94 (Tex. P.U.C. Sept. 21, 2001) ("*Line Sharing Arbitration Award*").

documentation supporting SWBT's plans to reserve dark fiber for its own uses, and asked that the dark fiber information requirements set forth by the *Waller Creek Award* be followed.[32]

The Arbitrators found that SWBT was required to provide CoServ with the same information that was awarded to Waller Creek in the *Waller Creek Award.*[33] The Commission stated that, in the *Waller Creek Award*, the Commission set guidelines for SWBT to follow in the provision of dark fiber information to CLECs.[34] In light of SWBT's ongoing obligations to develop its dark fiber provisioning practices, the Arbitrators found that CoServ should *at least* be provided the same dark fiber inventory information that was awarded to Waller Creek.[35]

Q. WHAT HARM IS DONE TO EPN WHEN SWBT DENIES AND HIDES INFORMATION BY USING THE VARIOUS SWBT MANUAL AND MECHANICAL INVENTORY SYSTEMS TO PLAY A SHELL GAME WITH EPN?

A. SWBT's intransigence imposes material delays on EPN's ability to serve its customers, thus impairing its ability to compete. At every turn, SWBT adds unnecessary delays, develops unreasonable interpretations of its parity assistance provisioning obligations, and evades its commitments to the Commission and the pro-competitive goals of the Act. A recent example involves our customer at 13505 Burnet in Austin. This customer has

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[32] *Id.* at 119.

[33] *Id.* at 121.

[34] *Id.* at 121-122.

[35] *Id.* at 122.

requested a DS3 facility and advises that SWBT has the facilities there to support it. EPN requested a DS3 numerous times from SWBT, and SWBT says it is not available. SWBT's account manager has advised EPN's customer that the DS3 is available if they buy it through SWBT.

SWBT's delays are calculated, discriminatory, and hinder EPN's ability to effectively compete in the market for telecommunications services in the State of Texas. As is demonstrated by EPN's repeated appearances before this Commission concerning SWBT's anti-competitive provisioning practices, SWBT's tactics have required EPN to expend its valuable resources to repeatedly litigate the rights provided to it under the *Waller Creek Award.*

Q. WHAT RESOLUTION DOES EPN PROPOSE TO ADDRESS SWBT'S ANTI-COMPETITIVE FACILITY CHECK PRACTICES?

A. EPN requests that contract language be added to the Agreement to ensure EPN's ability to gain parity access to all SWBT provisioning related systems including TIRKS, JMOS, PLRs, and DWOs, as well as estimates of future facilities that are planned, pending, partially completed, completed but not posted by SWBT, or reserved for SWBT's favored customers. In addition, to remedy SWBT's failure to comply with the existing interconnection agreement, as specified in EPN's complaint filed in Docket No. 25004, EPN requests that the Commission hold SWBT to the parity assistance provisioning standards set forth in the *Waller Creek Award* and the *EPN Interim Ruling.*

SWBT equipment are readily available to SWBT, but not to EPN. EPN has tried to cooperate with SWBT under the existing provisions that require EPN to have SWBT prepare the report from TIRKS. The process simply has not worked.

Q. WHAT IS TIRKS?

A. TIRKS stands for: Trunks Integrated Record Keeping System. TIRKS is a legacy mechanized operations support system, that is a database where SWBT keeps their equipment, and circuit inventory. It is the inventory management system where SWBT keeps track of their working and spare equipment. Circuit provisioning is a function where the SWBT circuit design group selects and assigns facilities and equipment to meet the service order requirements. SWBT's technicians track the install and completion of the service orders in TIRKS.

TIRKS in general has these 4 functions:

A service order control system
Equipment inventory
Facility inventory – keep track of the cooper and fiber in the field
Circuit inventory

Q. HOW DOES EPN USE TIRKS?

A. At the moment EPN is not permitted to use TIRKS. Instead EPN must aks SWBT to run reports from TIRKS. If permitted read only access to TIRKS through a remote gateway, EPN would use TIRKS to verify SWBT's responses to our facility requests for UNE's, in particular DS3 and Dark Fiber. TIRKS would allow EPN to identify where SWBT facilities and capacity exists for both interoffice and loop. In addition, EPN would be able to readily find CFA assignments.

Q. DOES SWBT HAVE ACCESS TO ITS INFORMATION REGARDING ITS FACILITIES ELCTRONICALLY?

A. Of course. These tools re invaluable resources that allow SWBT personnel to quickly respond to customer requests for service. For example, when I was an account manager for SWBT, I had TIRKS available on my desktop. With this direct access to TIRKS, I was able to quickly determine whether services or facilities were available according to the request of my customer. I would regularly copy the screen from my computer that had TIRKS data, and paste it into an email to my customer. Although this was not a mandated practice found in any SWBT manuals, it was the regular practice for access account managers concerned with meeting the needs of their customers.

Q. HOW WOULD EPN BE HARMED IF ITS PROPOSAL WERE NOT ADOPTED?

A. To a large extent, the lack of equal access to information tends to invite mischief. When SWBT knows that EPN cannot verify an answer, it is human nature for SWBT personnel to consistently err on the side that benefits their own employer. Equal information flow will put the facts on the table and eliminate unnecessary mischief and disputes, benefiting both parties and this Commission.

For example, prior to filing its complaint in this docket EPN asked for a report from TIRKS as required under the Waller Creek award. SWBT's account manager replied to EPN that "We have never provided this to EPN in the past."[36] SWBT's assertion is contradicted by exhibit WP-3 attached to my testimony, which indicates, contrary to Ms. Allen's e-mail, SWBT has provided EPN with TIRKS reports in the past.[37]

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[36] E-mail from Ricci Allen, SWBT to J. Crutcher, EPN Sep. 14, 2001, attached as Ex. WP-3.

[37] E-mails from Chad Townes, SWBT to Gary Nekula, EPN, July 9, 1999 (WP-4) and Sep. 24, 1999 (WP-5).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act	)	
Of 1996	)	
	)	
Joint Petition of BellSouth, SBC, and Verizon	)	
For Elimination of Mandatory Unbundling of	)	
High-Capacity Loops and Dedicated Transport	)	

DECLARATION OF RUSSELL B. OLIVER

I, Russell B. Oliver, declare and state:

1. I am Vice President, Network Operations, CTC Communications Corp. ("CTC"), 220 Bear Hill Road, Waltham, MA 02451.

2. I have reviewed the Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport filed on April 5, 2001. I am submitting this declaration in support of CTC's comments concerning this petition.

3. CTC has been in the telecommunications business for over 20 years. Providing long distance service since 1994 and local resold services since 1998, CTC is now also a facilities-based competitive local exchange carrier providing voice and data services to business clients throughout the Northeast and Mid-Atlantic States.

4. CTC utilizes SBC leased high-capacity interoffice facilities and leased high-capacity local loops to provide service to its customers in Connecticut and Verizon leased high-capacity interoffice facilities and leased high-capacity local loops to provide service to its customers in all the other Northeast and Mid-Atlantic states where CTC operates.

5. While CTC's network spans the East Coast from Maine to Virginia, CTC only recently deployed its initial switch which is capable of providing both Class 4 and Class 5 switching functionality throughout its entire network. However, until CTC has completed the necessary interconnection arrangements with the ILECs throughout its network serving area, CTC has been and will continue to be forced to rely on reselling

ILEC services and facilities. As CTC completes its interconnection arrangements with ILECs, it will be transitioning its resold services and facilities to UNEs over which it will provide a full suite of voice and data services, including local dial tone.

6. At the present time, CTC serves over 98% of its facilities-based customers utilizing Verizon and SBC high-capacity interoffice transport and local loop facilities.

7. CTC has purchased dark fiber from alternative suppliers to replace, over time, some of the Verizon and SBC leased high-capacity interoffice facilities. When CTC's alternative dark fiber is all in service, likely by the first quarter of 2002, CTC will have the capability to replace these Verizon and SBC interoffice facilities in 55 Verizon and SBC local switching offices. These 55 local switching offices represent an extremely small percent of the total number of Verizon and SBC local switching offices in the Northeast and Mid-Atlantic States where CTC serves and/or plans to serve customers.

8. Currently, however, CTC has activated alternative dark fiber in only 4 of these 55 offices in Massachusetts and Southern New Hampshire. CTC plans to activate the remaining 51 offices progressively through the remainder of 2001 and into 2002, however this progression is not guaranteed. CTC's experience in this area has shown that there are frequently long delays before the fiber is completed and available for service. For example, It is my understanding that under its CATT tariff, Verizon frequently takes up to 4 months to provide local switching office connections to CLECs, a job that generally involves less than a week's work. Additionally, fiber providers terminating their fiber in ILEC local switching offices experience similar intervals and delays.

9. Even when CTC's fiber network is fully constructed and in operation, CTC will remain fully dependent on Verizon and SBC for the overwhelming majority of the high-capacity interoffice facilities and 100% of the high-capacity local loops necessary to connect customers to its network.

10. In addition to leasing standard high-capacity interoffice and local loop facilities, CTC is dependent on leasing high-capacity UNE based fiber transport facilities from Verizon and SBC to serve customers in secondary, tertiary and rural markets where there are no alternative suppliers to the ILEC. Currently CTC has orders in process for OC3 UNE connections to 3 Verizon local switching offices and plans to order OC3 UNE connections to 3 more Verizon local switching offices this summer. These UNE facilities are essential to serve CTC customers in geographic areas such as the Berkshire and southeastern areas of Massachusetts, Vermont and portions of Pennsylvania, Maryland, and New York where there is limited or no alternative fiber supplier to Verizon.

11. For these reasons, it is my opinion that CTC's fiber network does not currently, and will not even when it is completed, obviate CTC's need for unbundled high-capacity ILEC interoffice facilities, local loops and UNE OC3 transport. CTC would be critically impaired without access to these Verizon and SBC facilities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information, knowledge, and belief.

DATED: _____ BY: _____

Russell B. Oliver
Vice President, Operations
CTC Communications Corp.
220 Bear Hill Road
Waltham, Massachusetts 02451

CERTIFICATE OF SERVICE

I, Alma R. Myers, a secretary with the law firm Swidler Berlin Shereff Friedman, LLP, hereby certify under penalty of perjury that on April 5, 2002, a copy of the foregoing Comments were served on the following:

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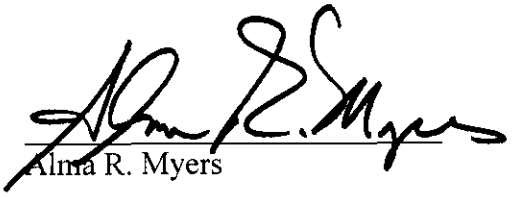

Alma R. Myers

*Via Courier (to 236 Massachusetts Ave., N.E., Suite 110, Washington, D.C. 20002)
**Diskette Copy